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1722 EYE STREET, N.W.
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SINGAPORE
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FOUNDED 1866

WRITER'S DIRECT NUMBER
(202) 736-8662

WRITER'S E-MAIL ADDRESS
vleather@sidley.com

April 17, 2001

RECEIVED

REDACTED - FOR PUBLIC INSPECTION

APR 17 2001

VIA COURIER

2B 01-172
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S.W. - Room TWB-204
Washington, D.C. 20054

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APR 18 2001

Chief, MDRD
Enforcement Bureau

Re: AT&T Corp. v. Qwest Corporation (f/k/a/ US WEST Communications, Inc.), Supplemental Complaint, FCC File No. E-97-28

Dear Ms. Salas:


Pursuant to the Commission's Rules, I am enclosing for filing three copies of a Supplemental Complaint filed on behalf of AT&T Corp. against Qwest Corporation. Enclosed with the Supplemental Complaint are the necessary supporting materials, including the declaration of David I. Toof and exhibits thereto, proposed findings of fact and conclusions of law, an information designation, a certification regarding settlement efforts and AT&T's first request for interrogatories. The original supplemental complaint, along with the filing fee, is being filed today in Pittsburgh, care of the Mellon Bank. Finally, two copies are being served on the Commission's Enforcement Division and a copy is being served on Qwest Corporation and on its counsel.

AT&T's Supplemental Complaint includes attachments and exhibits that contain proprietary information as provided in Section 1.731 of the Commission's Rules (47 C.F.R. § 1.731). Accordingly, enclosed is a redacted version of its Supplemental Complaint for the public record. This redacted version excludes the confidential attachments and exhibits, which are being filed concurrently under seal.

Federal Communications Commission
April 17, 2001
Page 2

Thank you for your attention to this matter. If you have any questions, please call me at (202) 736-8662.

Very truly yours,


Valerie L. Leatherwood

Enclosures

cc: (w/o enclosures)
Chief, Formal Complaints and Investigations Branch
Enforcement Division, Common Carrier Bureau
Hance Haney, registered agent for Qwest Corp.
Jack L. Traylor, counsel for Qwest Corp.
Steve Davis, counsel for Qwest Corp.

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vleather@sidley.com

April 17, 2001

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APR 17 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA COURIER

Federal Communications Commission
c/o Mellon Bank
ATTN: Wholesale Lockbox Shift Supervisor
Three Mellon Bank Center
525 William Penn Way
27th Floor, Room 153-2713
Pittsburgh, PA 1529-0001

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APR 18 2001

Chief, MORD
Enforcement Bureau

Re: AT&T Corp. v. Qwest Corporation (f/k/a/ US WEST Communications, Inc.), Supplemental Complaint, FCC File No. E-97-28

Dear Sir or Madam:


Enclosed for filing, please find the Original Supplemental Complaint for damages in the above-captioned matter. I have enclosed with the Supplemental Complaint the necessary supporting materials, including the declaration of David I. Toof and exhibits thereto, proposed findings of fact and conclusions of law, an information designation, a certification regarding settlement efforts and AT&T's first request for interrogatories. A check in the amount of \$165.00 payable to the FCC is also enclosed.

Three copies of the supplemental complaint are also being filed with the Commission and its staff in Washington, D.C. today. A copy is being filed on Qwest today and on its counsel by U.S. mail.

Federal Communications Commission
April 17, 2001
Page 2

If you have any questions regarding this filing, please contact either Valerie Leatherwood at (202) 736-8662 or James Bendernagel at (202) 736-8162.

Very truly yours,


Valerie L. Leatherwood

Enclosures

cc: (w/enclosures)

Chief, Formal Complaints and Investigations Branch
Enforcement Division, Common Carrier Bureau
Qwest Corporation (c/o Hance Haney, registered agent)
Jack Traylor, Counsel for Qwest Corporation
Steve Davis, Counsel for Qwest Corporation

RECEIVED

APR 17 2001

Approved by OMB
3060-0411
Expires 06/30/2002
Est. Burden for
Respondent: 30 minutes

FORMAL COMPLAINT INTAKE FORM

1. Case Name: AT&T CORP. v. QWEST CORPORATION (f/k/a US WEST COMMUNICATIONS, INC.)	RECEIVED APR 18 2001 Chief, MDRD Enforcement Bureau 80202
2. Complainant's Name, Address, Phone and Facsimile Number, e-mail address (if applicable): AT&T CORP., 295 N. MAPLE AVENUE, BASKING RIDGE, NJ 07920	
3. Defendant's Name, Address, Phone and Facsimile Number (to the extent known), e-mail address (if applicable): QWEST CORPORATION, 1801 CALIFORNIA STREET, SUITE 2000, DENVER, CO 80202	
4. Complaint alleges violation of the following provisions of the Communications Act of 1934, as amended: CLAIM FOR DAMAGES PURSUANT TO SECTIONS 206, 207 & 208 OF THE COMMUNICATIONS ACT	

Answer (Y)es, (N)o or N/A to the following:

- Y 5. Complaint conforms to the specifications prescribed by 47 C.F.R. Section 1.734.
- Y 6. Complaint complies with the pleading requirements of 47 C.F.R. Section 1.720.
- Y 7. Complaint conforms to the format and content requirements of 47 C.F.R. Section 1.721, including but not limited to:
- Y a. Complaint contains a complete and fully supported statement of facts, including a detailed explanation of the manner in which the defendant is alleged to have violated the provisions of the Communications Act of 1934, as amended, or Commission rules or Commission orders.
- Y b. Complaint includes proposed findings of fact, conclusions of law, and legal analysis relevant to the claims and arguments set forth in the Complaint.
- Y c. If damages are sought in this Complaint, the Complaint comports with the specifications prescribed by 47 C.F.R. Section 1.722(a), (c).
- Y d. Complaint contains a certification that complies with 47 C.F.R. Section 1.721(a)(8), and thus includes, among other statements, a certification that: (1) complainant mailed a certified letter outlining the allegations that formed the basis of the complaint it anticipated filing with the Commission to the defendant carrier; (2) such letter invited a response within a reasonable period of time; and (3) complainant has, in good faith, discussed or attempted to discuss, the possibility of settlement with each defendant prior to the filing of the formal complaint.
- N e. A separate action has been filed with the Commission, any court, or other government agency that is based on the same claim or the same set of facts stated in the Complaint, in whole or in part. If yes, please explain:
- N f. Complaint seeks prospective relief identical to the relief proposed or at issue in a notice-and-comment proceeding that is concurrently before the Commission. If yes, please explain:
- Y g. Complaint includes an information designation that contains:
- Y (1) A complete description of each document, data compilation, and tangible thing in the complainant's possession, custody, or control that is relevant to the facts alleged with particularity in the Complaint, including: (a) its date of preparation, mailing, transmittal, or other dissemination, (b) its author, preparer, or other source, (c) its recipient(s) or intended recipient(s), (d) its physical location, and (e) its relevance to the matters contained in the Complaint; and
- Y (2) The name, address, and position of each individual believed to have firsthand knowledge of the facts alleged with particularity in the Complaint, along with a description of the facts within any such individual's knowledge; and
- Y (3) A complete description of the manner in which the complainant identified all persons with information and designated all documents, data compilations, and tangible things as being relevant to the dispute, including, but not limited to, identifying the individual(s) that conducted the information search and the criteria used to identify such persons, documents, data compilations, tangible things, and information.
- Y h. Attached to the Complaint are copies of all affidavits, tariff provisions, written agreements, offers, counter-offers, denials, correspondence, documents, data compilations, and tangible things in the complainant's possession, custody, or control, upon which the complainant relies or intends to rely to support the facts alleged and legal arguments made in the Complaint.
- Y i. Certificate of service is attached.
- Y j. Verification of payment of filing fee in accordance with 47 C.F.R. Section 1.1105(1)(c) is attached.
- N/A 8. If complaint is filed pursuant to 47 U.S.C. Section 271(d)(6)(B), complainant indicates therein whether it is willing to waive the 90-day complaint resolution deadline.
- Y 9. All reported FCC orders relied upon have been properly cited in accordance with 47 C.F.R. Sections 1.14 and 1.720(i).
- Y 10. Copy of Complaint has been served by hand-delivery on either the named defendant or one of the defendant's registered agents for service of process in accordance with 47 C.F.R. Section 1.47 and 47 C.F.R. Section 1.735(d).
- N/A 11. If more than ten pages, the Complaint contains a table of contents and summary, as specified in 47 C.F.R. Section 1.49(b) and (c).
- Y 12. The correct number of copies, required by 47 C.F.R. Section 1.51(c), if applicable, and 47 C.F.R. Section 1.735(b) have been filed.
- Y 13. Complaint has been properly signed and verified in accordance with 47 C.F.R. Section 1.52 and 47 C.F.R. Section 1.734(c).
- N/A 14. If Complaint is by multiple complainants, it conforms with the requirements of 47 C.F.R. Section 1.723(a).
- N/A 15. If Complaint involves multiple grounds, it complies with the requirements of 47 C.F.R. Section 1.723(b).
- N/A 16. If Complaint is directed against multiple defendants, it complies with the requirements of 47 C.F.R. Section 1.735(a)-(b).
- Y 17. Complaint conforms to the specifications prescribed by 47 C.F.R. Section 1.49.

READ INSTRUCTIONS CAREFULLY
BEFORE PROCEEDING

FEDERAL COMMUNICATIONS COMMISSION
REMITTANCE ADVICE

Approved by OMB
3060-0589
Page No 1 of 1

(1) LOCKBOX #
358120

SPECIAL USE

FCC USE ONLY

SECTION A - PAYER INFORMATION

(2) PAYER NAME (if paying by credit card, enter name exactly as it appears on your card)

SIDLEY & AUSTIN

(3) TOTAL AMOUNT PAID (U.S. Dollars and cents)

\$165.00

(4) STREET ADDRESS LINE NO. 1

c/o JAMES BENDERNAGEL

(5) STREET ADDRESS LINE NO. 2

1722 EYE STREET, N.W.

(6) CITY

WASHINGTON

(7) STATE

DC

(8) ZIP CODE

20006

(9) DAYTIME TELEPHONE NUMBER (include area code)

(202) 736 8136

(10) COUNTRY CODE (if not in U.S.A.)

FCC REGISTRATION NUMBER (FRN) AND TAX IDENTIFICATION NUMBER (TIN) REQUIRED

(11) PAYER (FRN)

(12) PAYER (TIN)

0362158694

IF PAYER NAME AND THE APPLICANT NAME ARE DIFFERENT, COMPLETE SECTION B
IF MORE THAN ONE APPLICANT, USE CONTINUATION SHEETS (FORM 159-C)

(13) APPLICANT NAME

AT&T CORP.

(14) STREET ADDRESS LINE NO. 1

295 NORTH MAPLE AVENUE

(15) STREET ADDRESS LINE NO. 2

(16) CITY

BASKING RIDGE

(17) STATE

NJ

(18) ZIP CODE

07920

(19) DAYTIME TELEPHONE NUMBER (include area code)

(908) 221 4243

(20) COUNTRY CODE (if not in U.S.A.)

FCC REGISTRATION NUMBER (FRN) AND TAX IDENTIFICATION NUMBER (TIN) REQUIRED

(21) APPLICANT (FRN)

(22) APPLICANT (TIN)

0134924710

COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET

(23A) CALL SIGN/OTHER ID

(24A) PAYMENT TYPE CODE

(25A) QUANTITY

CIZ

1

(26A) FEE DUE FOR (PTC)

(27A) TOTAL FEE

FCC USE ONLY

\$165.00

(28A) FCC CODE 1

(29A) FCC CODE 2

(23B) CALL SIGN/OTHER ID

(24B) PAYMENT TYPE CODE

(25B) QUANTITY

(26B) FEE DUE FOR (PTC)

(27B) TOTAL FEE

FCC USE ONLY

(28B) FCC CODE 1

(29B) FCC CODE 2

SECTION D - CERTIFICATION

(30) CERTIFICATION STATEMENT

I, **JAMES F. BENDERNAGEL, JR.**

, certify under penalty of perjury that the foregoing and supporting information is true and correct to the best of my knowledge, information and belief.

SIGNATURE

DATE

4/17/01

SECTION E - CREDIT CARD PAYMENT INFORMATION

(31)

MASTERCARD/VISA ACCOUNT NUMBER

EXPIRATION

☐ MASTERCARD

☐ VISA

I hereby authorize the FCC to charge my VISA or MASTERCARD for the service(s)/authorization herein described.

SIGNATURE

DATE

SIDLEY & AUSTIN
WASHINGTON, DC 20006

127282

15-701 8
2540

*****\$165.00

PAY
TO THE
ORDER OF

→ → → → → PAY ONLY 16500 PER MONTH CTC

VOID OVER \$100.00

SIDLEY & AUSTIN

FCC

001 29647

11 1 27 28 211 1:2540701161: 11 3740 005311

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

APR 17 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

AT&T CORP.,

Complainant,

v.

QWEST CORPORATION
(f/k/a US WEST Communications Inc.),

Defendant.

File No. E-97-28

RECEIVED

APR 18 2001

Chief, MDRD
Enforcement Bureau

SUPPLEMENTAL COMPLAINT OF AT&T CORP.

Pursuant to Sections 206, 207 and 208 of the Communications Act of 1934, 47 U.S.C. §§ 206-208, Section 1.720 *et seq.* of the Commission's Rules and Regulations, 47 C.F.R. § 1.720 *et seq.*, and the Commission's Memorandum Opinion and Order in *AT&T Corp. v. US WEST Communications, Inc.*, File No. E-97-28 (rel. Feb. 16, 2001) ("*1-800-4USWEST Order*"), granting AT&T's initial complaint in this proceeding, AT&T Corp. ("AT&T") files this Supplemental Complaint against Qwest Corporation (f/k/a US WEST Communications Inc.) ("Qwest"). In support of its Supplemental Complaint, AT&T alleges as follows:

INTRODUCTION AND SUMMARY

1. In its *1-800-4USWEST Order*, the Commission found that Qwest's 1-800-4USWEST service constituted the provision of in-region, interLATA service by a Bell operating company in violation of Section 271 of the Communications Act, and the Commission stated that

it would address the damages to be awarded AT&T when AT&T filed a supplemental complaint for damages. In this Supplemental Complaint and the supporting Declaration of David I. Toof, AT&T shows that it was damaged by Qwest's unlawful 1-800-4USWEST service in the amount of at least \$23.01 million over the period from April 1, 1997, through March 31, 2001, plus interest in the amount of \$3.31 million, for a total of at least \$26.32 million in damages. Further, in calculating these lost profits, AT&T has been forced to rely on publicly available information because Qwest has refused to produce information regarding the actual revenues and minutes of use that it realized from its unlawful 1-800-4USWEST service. Information in the possession of Qwest may show that AT&T's damages were substantially higher.

2. In addition, because Qwest is continuing to provide its unlawful 1-800-4USWEST service, AT&T further shows that it is being damaged in the amount of approximately \$16,000 per day for every day that Qwest continues to provide that unlawful service past April 1, 2001.

JURISDICTION

3. The Commission has jurisdiction over this Supplemental Complaint under Sections 206, 207 and 208 of the Communications Act of 1934, 47 U.S.C. §§ 206-208.

PARTIES

4. AT&T is a corporation organized and existing under the laws of the State of New York, with its principal place of business in New Jersey. AT&T is a provider of interLATA telecommunications services, as well as other telecommunications and non-telecommunications services.

5. Qwest is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 1801 California Street, Suite 2000, Denver,

Colorado 80202. On June 30, 2000, Qwest merged with US WEST, Inc., and Qwest is now the legal successor to US WEST.

6. As a result of the merger of Qwest with US WEST, Qwest is a “Bell operating company” (“BOC”) under Section 153(4) of the Communications Act, 47 U.S.C. § 153(4). Qwest provides local telecommunication services as a BOC in 14 western states: Arizona, Colorado, Idaho, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington and Wyoming (the “Qwest region”). As a BOC, Qwest is prohibited from providing interLATA services in the 14 states of the Qwest region until it has obtained the Commission’s authorization under Section 271 of the Communications Act, 47 U.S.C. § 271.

FACTUAL BACKGROUND

7. Qwest began offering its 1-800-4USWEST service in April 1997. *1-800-4USWEST Order*, ¶ 4.

8. Shortly thereafter, AT&T filed a Complaint with the Commission alleging, among other things, that Qwest’s 1-800-4USWEST service violated Section 271 of the Communications Act and that AT&T was being damaged by Qwest’s unlawful provision and marketing of this service. *See AT&T Complaint*, ¶¶ 22, 26-30.

9. On February 16, 2001, the Commission granted AT&T’s Complaint and found that Qwest’s 1-800-4USWEST service constituted an unlawful provision of in-region, interLATA service in violation of Section 271 of the Communications Act. *1-800-4USWEST Order*, ¶¶ 30, 35. The Commission further stated that it would address the amount of damages to AT&T when AT&T filed a Supplemental Complaint for damages. *Id.*, ¶ 31.

10. In its *1-800-4USWEST Order*, the Commission also declined to decide whether

certain prospective changes which Qwest had proposed to make to its 1-800-4USWEST service would convert the service into a lawful service offering. *1-800-4USWEST Order*, ¶ 32. Rather, the Commission indicated that Qwest should file petition for declaratory ruling to obtain the Commission's opinion as to the lawfulness of any proposed changes to its unlawful service. *Id.*

11. Following the issuance of the Commission's *1-800-4USWEST Order*, Qwest did not cease providing its unlawful 1-800-4USWEST service, nor did it file a petition for declaratory ruling regarding proposed changes to its service. Instead, in a letter to the Commission dated March 21, 2001, Qwest stated that it intended to continue offering its 1-800-4USWEST service notwithstanding the Commission's order finding the service to be unlawful. *See* Letter from Richard H. Bush, Qwest, to the Commission, dated March 21, 2001 (attached hereto as Attachment B). Qwest attempted to justify its continued provision of the service on the ground that the Commission "neither directed that Qwest discontinue the Service, nor did it direct that any specific modifications to the Service be made." *Id.* at 1. Qwest further stated that it was in the process of making certain changes to its 1-800-4USWEST service that would cure the problems identified in the Commission's *1-800-4USWEST Order*. *Id.* at 1-4.

12. By letter dated March 27, 2001, AT&T objected to Qwest's continued provision of its 1-800-4USWEST service and disagreed with Qwest's assertion that its proposed future changes to the service would cure the problems identified in the Commission's *1-800-4USWEST Order*. *See* Letter from Peter H. Jacoby, AT&T, to Robert B. McKenna, Qwest, dated March 27, 2001 (Attachment C). WorldCom also objected to Qwest's attempt to disregard the Commission's order. *See* Letter from Kecia Boney Lewis, WorldCom, to the Commission, dated March 30, 2001 (Attachment D).

13. Whether or not the changes proposed by Qwest will cure the deficiencies

identified by the Commission in the future, however, the undisputed fact is that AT&T has been damaged and continues to suffer damages as a result of Qwest's unlawful provision of its 1-800-4USWEST service.

AT&T'S DAMAGES THROUGH MARCH 31, 2001

14. Once a violation has been established in a complaint case brought under Sections 206-208 of the Communications Act, the complainant is entitled to recover "the full amount of damages sustained in consequence of . . . such violation" so as to put the complainant in the position that it would have been in but for the defendant's unlawful conduct. 47 U.S.C. § 206; *MCI Telecommunications Corp. v. Pacific Bell Tel. Co.*, 8 FCC Rcd 1517, 1518 (1993) (once liability is established in a Section 208 complaint case, "the defendants are liable for damages to the extent that the complainant can establish that it was damaged as a result of the violations").

15. By this Supplemental Complaint, AT&T shows that it has been damaged by Qwest's unlawful 1-800-4USWEST service in the amount of at least \$26.32 million for the period from April 1997 through March 31, 2001. This amount of damages consists of \$23.01 million in lost profits and \$3.31 million in interest. This calculation of damages is based on available information and conservative assumptions, and the actual damage to AT&T caused by Qwest's unlawful service could be substantially higher.

16. In support of this Supplemental Complaint, AT&T submits the Declaration of David I. Toof ("Toof Declaration") as Attachment A. Dr. Toof is an expert in the development and review of damage models used in commercial litigation in general and in the telecommunications industry in particular. See Toof Declaration, ¶ 1.

17. Dr. Toof's estimate of AT&T's damages consists of three basic calculations. First, he determined, on a quarter-by-quarter basis, the number of calling card minutes of use that

AT&T lost as a result of Qwest's unlawful 1-800-4USWEST service. *See* Toof Declaration, ¶¶ 5-12. Next, Dr. Toof multiplied those minutes of use by AT&T's average per minute earnings on domestic calling card services to derive AT&T's lost profits. *Id.*, ¶ 13. Finally, Dr. Toof calculated the amount of interest due and owing to AT&T on its lost profits using the statutory rate of interest generally employed by the Commission – the IRS Quarterly Corporate Overpayment Rate. *Id.*, ¶ 14.

18. Because Qwest has refused to produce information regarding the specific revenues and minutes of use that it realized from its unlawful 1-800-4USWEST service, AT&T has been forced to rely on other available data regarding the revenues that Qwest and Frontier expected to receive from the 1-800-4USWEST service to estimate the number of calling card minutes that AT&T lost as result of Qwest's provision of its unlawful 1-800-4USWEST service. Toof Declaration, ¶ 5. Information solely in the possession of Qwest regarding the revenues and minutes of use that it realized from its unlawful 1-800-4USWEST service may show that AT&T's damages were substantially higher.

19. As explained in Dr. Toof's Declaration, documents indicate that Qwest guaranteed that Frontier Communications Services, Inc. ("Frontier") would earn \$50 million in incremental revenues for the 1-800-4USWEST service during the first 30-month period beginning in April 1997 (when Qwest introduced the service) through the September 1999. Toof Declaration, ¶ 6. Of that \$50 million, approximately \$40 million of the revenues are allocated to in-region, interLATA calls, which Qwest could not lawfully provide, and approximately \$5 million of the revenues are allocated to out-of-region interLATA calls, which Qwest would never have provided if it had not unlawfully offered in-region, interLATA calls. *Id.*, ¶¶ 7-9. It is further reasonable to assume an initial 18-month ramp-up period for the

revenues from the service, after which the service would have more modest annual revenue growth rates. *Id.* at 9. Based on these reasonable assumptions, quarterly incremental revenues for Qwest's unlawful 1-800-4USWEST service were calculated by Dr. Toof and are set forth in Columns A and D of Exhibit DIT-3.

20. The quarterly incremental revenue figures were then converted into incremental minutes of service for each quarter based on the fact that publicly available documents show that for a five minute call, the average rate per minute received by Frontier was \$0.36 for in-region interLATA calls, while other documents show that the average rate per minute received by Frontier for out-of-region interLATA calls was \$0.1066. Toof Declaration, ¶¶ 10-11.

21. The next step was to determine what portion of the Qwest minutes of use would have been carried by AT&T but for Qwest's unlawful conduct. This was done using conservative estimates of AT&T's share of the consumer calling card market during each of the periods in question. *See* Toof Declaration, ¶ 12.

22. In order to determine the amount of lost profits suffered by AT&T as a result of Qwest's unlawful 1-800-4USWEST service, the minutes of use lost by AT&T in each quarter were multiplied by AT&T's average earnings before interest and taxes ("EBIT") on its interLATA domestic calling card services for 1996 and 1997. Toof Declaration, ¶ 13. This calculation establishes that AT&T had lost profits in the amount of at least \$23.01 million as a result of Qwest's unlawful 1-800-4USWEST service offering for the period April 1997 through March 2001. *Id.*

23. AT&T is also entitled to interest on its lost profits at the Commission prescribed rate. *See, e.g., Section 208 Complaints Alleging Violations of the Commission's Rate of Return Prescription*, 10 FCC Rcd 3657, 3678-79 (1994); *MCI Telecommunications Corp. v.*

Pacific Bell Tel. Co., 8 FCC Rcd 1517, 1529-30 (1993); *Western Union Tel. Co.*, 10 FCC Rcd 1741, 1747-48 (1995) (all holding that interest at the IRS rate for tax refunds is appropriately awarded to Section 208 complainants to compensate them for the fact that they were deprived of the use of their funds as a result of the defendant's unlawful conduct). Applying the prescribed IRS Quarterly Corporate Overpayment Rate to the lost profits calculated by AT&T in each quarter for the period April 1997 through March 2001 results in interest in the amount of \$3.31 million. See Toof Declaration, ¶ 14.

24. Combining the \$23.01 million in the lost profits incurred by AT&T as a result of Qwest's unlawful 1-800-4USWEST service with the \$3.31 million in interest on those lost profits results in a total amount of damage to AT&T caused by Qwest's unlawful 1-800-4USWEST service through March 31, 2001, of \$26.32 million. See Toof Declaration, ¶ 15.

AT&T'S CONTINUING DAMAGES CAUSED BY QWEST'S CONTINUING VIOLATION

25. Following the issuance of the Commission's *1-800-4USWEST Order*, Qwest did not cease providing its unlawful 1-800-4USWEST service. Instead, in a letter to the Commission dated March 21, 2001, Qwest stated that it intended to continue offering its 1-800-4USWEST service notwithstanding the Commission's order finding the service to be unlawful. See Letter from Richard H. Bush, Qwest, to the Commission, dated March 21, 2001 (Attachment B). Qwest attempted to justify its continued provision of the service on the ground that the Commission "neither directed that Qwest discontinue the Service, nor did it direct that any specific modifications to the Service be made" (*id.* at 1), and Qwest further stated that it intends to make certain future changes to its 1-800-4USWEST service. *Id.* at 1-4.

26. Whether or not the future changes proposed by Qwest will cure the deficiencies identified by the Commission, it is undisputed that Qwest is currently continuing to provide the

service found by the Commission to be unlawful, and AT&T is continuing to suffer damage from Qwest's unlawful conduct.

27. As a result of Qwest's continuing violation of Section 271 of the Communications Act, AT&T is continuing to be damaged at the rate of approximately \$16,000 per day based upon the damages suffered by AT&T during the first quarter of 2001. *See Toof Declaration, ¶ 21.*

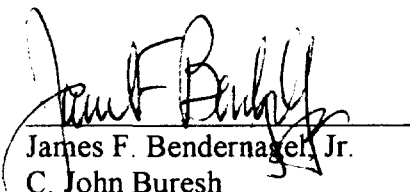
CONCLUSION

Based on the foregoing, the Commission should

- a. Award damages to AT&T and against Qwest for lost profits caused by Qwest's violation of Section 271 from April 1997 through March 2001 in the amount of at least \$23.01 million, plus interest in the amount of \$3.31 million; and
- b. Award damages to AT&T and against Qwest for lost profits caused by Qwest's violation of Section 271 after April 1, 2001, in the amount of approximately \$16,000 per day for so long as Qwest continues to provide its unlawful 1-800-4USWEST service.

Respectfully submitted,

Mark C. Rosenblum
Peter H. Jacoby
Aryeh S. Friedman
AT&T Corp.
295 North Maple Avenue, Room 3245H1
Basking Ridge, NJ 07920
(908) 221-4243


James F. Bendernagel, Jr.
C. John Buresh
Valerie L. Leatherwood
Sidley & Austin
1722 Eye Street, N.W.
Washington, D.C. 20006
(202) 736-8000
(202) 736-8711 (facsimile)

Counsel for Complainant AT&T Corp.

April 17, 2001

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of April, 2001, I caused a copy of the foregoing Supplemental Complaint of AT&T Corp. and all Exhibits thereto and documents in support thereof to be served by hand on the following:

Hance Haney
Qwest Services Corporation
1020 19th Street, N.W., Suite 700
Washington, D.C. 20036

Chief, Formal Complaints and Investigation Branch
Federal Communications Commission
Enforcement Division
Common Carrier Bureau
Washington, D.C. 20554

And by U.S. Mail on the following:

Jack L. Traylor
Legal Department
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EXHIBIT LIST
IN SUPPORT OF SUPPLEMENTAL COMPLAINT

<u>Exhibit</u>	<u>Description</u>	<u>Date</u>
A.	Declaration of David I. Toof, Ph.D. and the exhibits thereto	4/16/01
B.	Letter from Richard H. Bush, Vice-President – Voice Products, Qwest, to Ms. Magalie Roman Salas, FCC	3/21/01
C.	Letter from Peter H. Jacoby, General Attorney, AT&T to Robert B. McKenna, Associate General Counsel, Qwest	3/27/01
D.	Letter from Kecia Boney Lewis, Worldcom to Magalie Roman Salas, FCC	3/30/01
E.	Proposed Findings of Fact and Conclusions of Law	4/17/01
F.	Declaration of Mark Rosenblum re: Settlement Efforts	4/16/01
G.	Information Designation	4/17/01
H.	Statement re: Compliance with §1.721(a)(9) of the Commission's Rules	4/17/01
I.	Statement re: Compliance with §1.721(a)(11) of the Commission's Rules	4/17/01
J.	AT&T's First Request for Interrogatories	4/17/01



A



**EXHIBIT IS PROPRIETARY
PURSUANT TO 47 C.F.R. § 1.731**

AND HAS BEEN FILED UNDER SEAL

DAVID I. TOOF
Former Partner
Ernst & Young, LLP
National Utilities Practices

PRESENT RESPONSIBILITIES:

Application of quantitative methodologies to issues of regulation and economics in the telephone, natural gas and electric utility industry. This includes problem formulation, decision theory, mathematical programming, development and implementation of litigation related damage assessment and management information systems.

EXPERIENCE:

Dr. Toof was with Ernst & Young and predecessor firms from 1975 until 1996. Representative engagement experiences are as follows:

- Testified on behalf of AT&T in a dispute with a reseller of long distance services. The reseller claimed to have been damaged by various provisions in AT&T's filed tariffs. Dr. Toof's role was twofold. First, to present an overview of the business strategy and practices employed by the reseller from start-up to divestiture, emphasizing the risk inherent in arbitrage. Second, he analyzed and critiqued the damage study submitted by the reseller's expert witness. Of particular concern was the lack of linkage between the actual operating experience of the enterprise and the hypothetical performance posited in the damage study with regard to both economic and regulatory factors.
- Calculated the damages suffered by PECO and Delmarva Power & Light (DPL) in connection with the shutdown of the Salem Nuclear generating Station (Salem). Salem, a two unit station is operated by PSE&G. PECO and DPL as non-operating owners were compelled to purchase replacement power during the period of the shutdown. In addition, both companies suffered additional financial burdens as a direct result of the shutdown. Working with both companies he developed a consistent damage theory, compiled the requisite supporting data and prepared an expert's report detailing the various damage components.
- Represented the State of Victoria, Australia, with regard to a dispute over the issue of an independent system operator pursuant to the privatization of the state of Victoria's natural gas industry. The state proposed, as a component of the privatization, the creation of an independent system operator to

oversee and dispatch the in-place gas transmission grid. The proposal met with resistance from many parties. Dr. Toof's role was to review the position papers of the various commentators, follow-up with in-person meetings and ultimately comment on the appropriateness of the various proposals.

- Directed Ernst & Young's efforts on behalf of Enron and its subsidiary IntraTex in a dispute over IntraTex's operation of the OASIS Pipeline, (OASIS, a Texas intrastate runs from Waha to Katy, Texas). He was responsible for assessing the prudence of IntraTex's management and critiquing claims of alleged economic damages stemming from various gas sales, exchanges and transportation agreements during the 1970's and 1980's.
- Testified on behalf of ANR Gas Pipeline before the FERC with regard to the prudence of ANR's gas purchasing practices in the year immediately prior to the implementation of FERC Order 636. ANR had imposed a Gas Inventory Charge (GIC) for this transition period. The GIC was subject to an after the fact regulatory review and was challenged by several intervenors. Dr. Toof sponsored both direct and rebuttal testimony focusing on the prudence of ANR's decisions and their decision making process.
- Testified on behalf of the Unsecured Creditor's Committee in the Columbia Gas System/Columbia Transmission Company - Inter Company claims litigation. He focused on the historical disparities between Columbia Transmission Company's (TCO) supply portfolio and system requirements focusing on the changed economic and regulatory climate from 1985 to 1990. He presented an estimate of contingent liability attributable to the excess gas cost of TCO's gas supply portfolio in 1990.
- Testified on behalf of Tennessee, ANR and Transco Gas Pipelines before the FERC with regard to the economic viability of a proposed gas purchase contract settlement. He calculated the value of the proposed settlement by comparing price, volume and price cap limitations under the terms of the original contract and the revisions embedded in the settlement.
- Appeared as an expert witness in litigation before the FERC and in Harris County, Texas with regard to alternative damage theories in natural gas producer/pipeline contract litigation. Responsible for the development of both an automated data base storage and retrieval system and the analytical models which were employed to both analyze and rebut plaintiff's remedy proposals. The data base contained well-by-well production, tax, and investment data for over 4,500 wells for the period 1974 - 1983.

- Directed Ernst & Young's support of a major Southern Florida municipal utility in a construction claim/business interruption litigation. Ernst & Young's service included computation of both direct and consequential damages arising from the delayed completion and inefficient operation of multiple components within the plant.
- Directed Ernst & Young's efforts on behalf of a consortium of natural gas local distribution companies in a rate and prudence dispute with Columbia Gas Transmission Co. Issues included a determination of least cost gas supply, security of supply, planning and implementation of alternative gas procurement and pricing strategies.
- Directed Ernst & Young's support of a major LNG shipping concern involved in an arbitration proceeding with Trunkline LNG, a subsidiary of Panhandle Eastern Corporation, was seeking to abrogate its "ship-or-pay" contract. The thrust of Ernst & Young's support was to develop and document alternative business strategies that would mitigate the claim of commercial impracticability.
- For an investigation of the cost and schedule overruns associated with the construction of the Palo Verde Nuclear Generating Station, responsible for two major areas: the development and implementation of document and data storage, project control and information systems; and a review of the adequacy of the planning and forecasting functions of the four investor-owned project participants, focusing on both the initial and continuing decision to participate in the project.
- Directed Ernst & Young's efforts on behalf of Furnas, a wholly owned subsidiary of the Brazilian government charged with the generation and transmission of electricity, in a business interruption claim against Westinghouse. The focus of the effort was preparation of the damage claim and all supporting documentation. The damage claim focused on historical direct costs, historical consequential cost, and both direct and consequential future costs. He was the project manager with complete responsibility for all aspects of the engagement.
- Provided the day-to-day project administration for Ernst & Young's support of Continental Airlines Chapter 11 bankruptcy litigation focusing on the claims of the various labor groups. In addition to coordinating the various components of the project, he was responsible for developing, identifying, implementing,

and training with regard to an automated data storage, retrieval, and analysis system.

- Directed Ernst & Young's efforts on the behalf of the Government of the Philippines, with regard to tracing the flow of funds associated with illegal commission payments. The focus of the effort was to trace the funds, in connection with the construction of a nuclear power plant, from source through a myriad of financial transactions and physical transfers. He was the project manager with complete responsibility for coordinating the engagement, which involved staff, data and banks throughout the world.
- Directed Ernst & Young's efforts on behalf of a consortium of U.S. railroads in defending a major anti-trust litigation brought by Energy Transport Systems Inc. (ETSI). His day-to-day responsibilities included technical, administrative, and liaison with attorney and client.
- Directed Ernst & Young's efforts on behalf of Brown Boveri, electric equipment manufacturer in a business interruption claim regarding an electric utility. The focus of the effort was defending against the consequential damages component of the claim. He was the overall project manager with complete responsibility for all aspects of the engagement: technical, administrative, and liaison with attorney and client and was identified as a testifying expert.
- Before both the FERC and the North Carolina Utility Commission, he has represented Nantahala Power & Light and ALCOA with regard to charges by intervenor groups of damages arising from the development of hydro-electric resources along the Little Tennessee River.
- Responsible for assessing the adequacy of the system expansion planning process for all of Ernst & Young's comprehensive management audits of electric and gas utilities both in the United States and abroad. This includes an assessment of both planning and forecasting methodologies and the analytic and data tools employed in the support of these activities.

EDUCATION:

Ph.D. Operations Research
Temple University 1978